IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEAL NO.431 OF 2007

Jagdish Gangaram Fansiya ..Appellant.
Vs.
The State of Maharashtra ..Respondent.

Shri Kiran Makasare, adv. for the Appellant.
Shri D.P.Adsule, APP for the State.

CORAM : J.H.BHATIA, J.
DATE : JUNE 16, 2007.

P.C.

1. Heard Mr.Makasare the learned counsel for the appellant and Mr.Adsule the learned APP for the State.

2. Read the affidavit filed by Shri Uttam Chopane the Assistant Commissioner of Police attached to Kurla Division, Bombay. To state in brief, on 12-3-2006 at about 3.15 p.m., two persons entered the shop of a jeweller under the pretext of purchasing ear rings. Prosecution witness, who appears to be a worker in the said shop, was taking out earrings from the box. At that time one of the two persons assaulted him on his back with chopper. Due to this the complainant, who was present in the shop, shouted for help and people gathered there. On seeing the same, assailants and their one more associate, who was keeping watch outside the shop ran away. On the basis of report lodged at the police station Kurla, Crime No.122 of 2006 was

registered under Sections 324, 452, 109 read with Section 34 of the I.P.C. and under Sections 4 and 27 of the Arms Act against the unnamed persons. Later on, on 9-10-2006 one Sajid Ahmed Sayyed, who is said to be an associate of Mohammed Fahim Mohammed Sharif Khan alias Vilas @ Fahim Much Much of Chhota Shakil gang, was arrested at Dharavi by Anti Extortion Cell D.C.B., C.I.D. in C.R.No.18 of 2006. His interrogation revealed that he himself Rahul Girish Rathod and Jai Sukhdev Thakur had committed the offence in crime no.122 of 2006 by Kurla police station, at the instance of Mohammed Fahim Khan @ Vilas @ Fahim Much Much. According to the prosecution, during interrogation of the accused Sajid Ahmed Sayyad, he also revealed that the present appellant/accused no.4 Jagdish had given information about that the witness-jeweller owns property worth Rs.4 to 5 crores. In view of revelations that the said offence was committed on 12-3-2006 at the jeweller’s shop by the accused persons at the instance of members of Organised Crime Syndicate headed by wanted accused Fahim Much Much, provisions of Section 3(1)(ii). 3(2) and 3(4) of the M.C.O.C.Act were added to crime no.122 of 2006.

3. The present applicant was arrested by the police before application of the provisions of M.C.O.C. Act

and he was also granted bail by the Metropolitan Magistrate 11th Court at Kurla Police Station. After application of the provisions of M.C.O.C.Act, the police approached the Special Court, M.C.O.C. Act for cancellation of bail and for issue of N.B.W. After hearing the parties on 13-2-2007, the learned Special Judge under M.C.O.C.Act allowed the application filed by the police for cancellation of bail and as a result, the applicant was taken in judicial custody. Since then he is in custody. He has challenged the said order in the present appeal.

4. After going through the affidavit filed by the Assistant Commissioner of Police, Mr.Uttam Chopne I find that except the statement made by Sajid Ahmed Sayyed, there is no material against the present appellant. Admittedly, no other criminal case is registered against him nor there are any criminal antecedents against the present appellant. According to the prosecution, the said Sajid Ahmed had stated in his confession statement that the present appellant had informed about the witness jeweller and that he owns property worth Rs.4 to 5 crores. It is very easy for a co-accused to make such statement and implicate other person as an accused. However, admittedly the prosecution could not collect any evidence to

corroboration the statement of Sajid Ahmed, in respect of the present appellant. Taking into consideration this aspect of the matter, I find that prima-facie there is no evidence against the present appellant. Atleast there was no strong circumstance or material on record on the basis of which bail already granted to him could be cancelled. Taking into consideration the circumstances, I find that the learned Special Judge, M.C.O.C.Act committed error in passing the impugned order of cancellation of bail.

5. Therefore, appeal is allowed. The impugned order stands set aside. The applicant shall continue to be on bail, which was granted to him earlier. Therefore, the appellant be set at liberty forthwith if not required in any other offence.

6. Observations made in this order are only for the purpose of deciding this appeal and shall have no bearing on the merits of the case as and when it is taken up for trial.

[J.H.BHATIA, J.]